

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 621(a)(1) of the Cable)	
Communications Policy Act of 1984 as amended)	MB Docket No. 05-311
by the Cable Television Consumer Protection and)	
Competition Act of 1992)	

**REPLY COMMENTS OF THE
LOCAL GOVERNMENT LAWYER’S ROUNDTABLE
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING
AND INITIAL REGULATORY FLEXIBILITY ANALYSIS**

The Local Government Lawyer’s Roundtable (“LGL”) submits these Reply Comments in response to the Federal Communications Commission’s Further Notice of Proposed Rule Making in the Implementation of Section 621 (a)(1) of the Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992. LGL is a non-profit corporation which educates local government attorneys on various issues to assist them in their day to day activities.

The Commission proposes to expand its recently issued Report and Order and Rules implementing Section 621 (a)(1) to include incumbent providers. In the Initial Regulatory Flexibility Analysis (“IRFA”), the Commission states that applying the proposed Rules to “cable franchisees with existing franchises likely will have at most a *de minimis* impact on small governmental jurisdictions.” *See*, IRFA at ¶16. The National Cable & Telecommunications Association cites the Commission’s “*de minimis*” finding as support for its position that if LFA’s are unreasonably inhibiting current and prospective cable operators, the Commission should remove these restrictions from all franchisees, not just new entrants. *See*, NCTA Comments at 21. However, the Commission’s statement of *de minimis* impact does not constitute an *analysis* of the impact of its proposed actions in a manner consistent with the requirements of the Regulatory Flexibility Act (“RFA”).

The Regulatory Flexibility Act requires that the Commission *analyze* the affects and impacts of its proposed actions on small governmental jurisdictions. These impacts include things such the costs of additional training to understand the Commission’s actions and the potential required hiring of additional personnel to accommodate the requirements of the proposed actions. For instance, the Town of Harpswell, Maine, specifically commented on the difficulty of interpreting what is “reasonable” under the Commission’s proposed Rules when renegotiating franchises. The Town has outlined the burden it and other small governmental jurisdictions will encounter under the Commission’s proposed Rules. *See*, Town of Harpswell, Maine Comments at 1.

The Commission has not analyzed the impact of its actions on towns like Harpswell. The Commission has given no weight to the economic impact of its actions on Local Franchising Authorities' ("LFA"). The Commission's economic impact analysis is similar to that of the Secretary of Commerce in *North Carolina Fisheries Ass'n, Inc. v. Daley*, 27 F.Supp.2d 650 (E.D. Va. 1998), where the district court held the Secretary of Commerce had produced an "economic report that obviously is designed to justify a prior determination." The Commission's analysis also seems to be designed to justify a prior determination. This lack of consideration does not suffice to meet the requirements of the RFA.

If the Commission prepared a proper IRFA, small governmental jurisdictions would then be able to comment on the accuracy of the estimates and possible ways to minimize the impact. This would allow the Commission to truly consider the impact of its proposed Rules.

In addition, in the IRFA, the Commission states that the alternative to expanding the rules to existing cable franchisees is to "[continue] to allow LFA's to follow procedures that are unreasonable." See, IRFA at ¶16. The LGL disagrees with the Commission's unfounded assertion that LFA's are following "unreasonable" procedures. Regardless, the Commission's assertion is not a "regulatory alternative" as envisioned by the RFA. Section 603 of the RFA requires the FCC to *describe and analyze significant alternatives* that are consistent with the underlying statute and the agency's regulatory goals. See, 603 (c)(1). The Commission has not presented nor considered any alternative. The Commission has not taken into account the scarce resources available to small governmental jurisdictions, which by the Commission's own estimate number over 84,000 entities. Without proper consideration of these significant alternatives, the Commission's IRFA is inadequate.

The Commission should develop and review true alternative schemes. The Commission should *actually* review the impact of its proposed actions and Rules, and should specifically seek comment from small governmental jurisdictions.

Consistent with advice the Commission received from the Office of Advocacy of the U. S. Small Business Administration In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services, ET Docket No. 04-295, the Local Government Lawyer's Roundtable urges the Commission to issue a revised IRFA to allow for a proper analysis and comment on the issues raised by its proposed actions.

Respectfully submitted,

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